



# EEO Compliance & Complaints Newsletter

FALL 2008

Issue Two

## Mission of EEOCCR

The mission of the EEO Compliance & Complaints Review Directorate is to manage the Army's discrimination complaint processing program and to fully and fairly adjudicate civilian complaints of discrimination on behalf of the Secretary of the Army.



Ms. Catherine Mitrano, Deputy Assistant Secretary (Review Boards) and Director of the Army Review Boards Agency (ARBA)

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## FROM THE DIRECTOR

As we come to the end of FY08, opportunities and challenges are abounding. We have endured a year of changing parameters and stand now on the forefront of more organizational transformations, NSPS insights, the prevailing historic national elections and pending administration changes.

In this Fall 2008 edition, we want to focus on your preparation for the FY 2008 462 Report, and continue to provide tips and updates for better use of iComplaints. We also want to reemphasize the regulatory procedures by which we should be accepting and dismissing complaints. We continue our quest to better our procedures in support of investigations.

Overall, our processing times steadily improve. However, we still struggle with timely processing of pre-complaints and the production of quality counselor reports. Updates to Army Regulation (AR) 690-600 are on the horizon. We are aware of the varied experience levels of EEO career-

ists and counselors throughout the Army. Our regulation updates seek to reconcile this variance by emphasizing mandatory, uniform training and focusing on clear-cut pre-complaint procedures. In the meantime, in this issue we highlight some of the expected changes which will be followed up with interim policy guidance.

It is essential for EEO practitioners as well as EEO Complaints Managers to be informed on the latest information in the world of complaints processing. Therefore, it is our hope that we will continue to keep our lines of communications open in both directions, which will ensure we properly and effectively service the community we are all chartered to serve.

In closing, it is with great pleasure that I introduce Ms. Catherine C. Mitrano, our new Deputy Assistant Secretary of the Army (Review Boards) and Director of the Army Review Boards Agency (ARBA), appointed on July 20, 2008. In this capacity she is responsible

for the oversight and operations of EEO Compliance and Complaints Review Directorate and 15 Army personnel boards, including the Army Board for the Correction of Military Records, the Army Discharge Review Board, the Army Special Review Boards, the Army Clemency and Parole Board, and the Army Grade Determination Review Board. Ms. Mitrano started her federal career in 1991 as an attorney with the New England Region of the Federal Aviation Administration. She continued her federal service holding positions as an attorney with the US Postal Service and the US Coast Guard, specializing in employment law and civil rights. Ms. Mitrano holds both a BA degree in Political Science, *Magna Cum Laude*, and a Juris Doctor from Boston University as a graduate of its elite combined degree program.

Spurgeon A. Moore  
Director EEOCCR



## FY 2008 462 Report Prep

### **FY 2008 462 Report**

It's just about that time again, time to get ready for the annual production of the Army's 462 Report. Thanks to all of your hard work, we've been able to submit our report on time for three years in a row – no sense in stopping now! All FY 2008 complaint data must be loaded in iComplaints by midnight on 15 October. Please email Jennifer.Kindinger@us.army.mil with your command's 462 point of contact (POC). Jennifer will provide more detailed guidance to your POC as we move forward. Template BOXi reports for many of these data checks will be posted in the "Public Folders" for users to access and run quickly and easily. Check early, check often, and come 31 October we'll all be checking out for some well-earned rest and relaxation! Below are some quick and easy checks that iComplaints users can begin doing immediately to make sure our data is as accurate as possible when the fiscal year ends.

**Social Security Numbers.** Social Security Numbers (SSN) for all complainants are still required to be entered into iComplaints. This is due to our obligation to report the number of complainants filing complaints and the number of repeat filers, which requires that we have an identifying number that is both unique to each complainant and the same for an individual's multiple complaints. False identifiers such as 000-00-0000 will automatically cause errors in the count of complainants in the 462 Report and must be corrected as quickly as possible. A template BOXi report titled "SSNs" will identify many of the false identifiers known to have been used in the past. EEOCCR staff will be running this report and providing command POCs with lists of cases still containing false SSNs on 10 October, so be sure to check your data and enter the correct SSNs for all your complainants by that date.

**Corrective Actions.** Every case closed with a NSA is required to have at least one corrective action entered into the case record. A template BOXi report titled "NSAs and Corrective Actions" will provide users with a list of all cases settled within a timeframe chosen by the user – look for any case that does not have a corrective action entered, then check your files for the NSA in that case and update the iComplaints record. NOTE: If a NSA settled multiple complaints, users should not enter all corrective actions into each case record – that will result in a double or triple-counting of the corrective actions on the 462 Report. Users should enter all corrective actions into one of the case records, then add a single "Other" in the other cases with a comment noting the docket number of the case record containing the full list of actions.

**Investigator and Mediator Contact Information.** Any time a "Mediation Conducted" event or the "Options Notice Issued" event is entered into a case record iComplaints will prompt the user to enter the contact information for the mediator or investigator. These are required data elements for accurate counting of completed mediations and investigations in the 462 Report, and iComplaints will not allow a case record to be closed until this information is entered. Please review all your open case records and make any corrections necessary to ensure all required contact information has been entered.

**ADR Events.** iComplaints now requires that entering certain ADR events into a case record triggers a requirement for a follow-up ADR event to be entered before the case can be closed. For example, if "ADR Offered" has been entered the system will require the user to enter either "ADR Accepted" or "ADR Rejected". This requirement should ensure that almost all closed complaints contain the necessary ADR events to produce an accurate 462 Report, but users should review all cases that are still open at the end of the fiscal year to ensure their ADR events are completely and accurately updated.

## FY 2008 462 Report Prep (continued)

**Update! Update! Update!** As always, the bottom line is if you've kept your cases updated regularly throughout the year there shouldn't be too much that you'll have to do in October to ensure your complaint data is complete and accurate. Running the "Complaint Phase" reports in BOXi is a quick and easy way to identify cases that haven't been updated in a while and may not contain the most recent information about the status of the complaint. Put all of the data elements in the Complaint Phase folder, found under the main "Complaint" folder in BOXi, into the results box in the order they are listed in the folder (i.e. top to bottom). Use the conditions to choose which types of cases you wish to review; for example, to review all your open formal complaints the conditions you should enter are "Status" equal to "Open" AND "Case Type" equal to "F". Look for cases that are listed as overdue or that do not have an event entered in the last month and are not currently pending a Final Agency Decision (FAD) or hearing.

**Take Note!** The workforce, training, and ADR program data reported in Parts III and XII must still be collected manually. Template spreadsheets will be forwarded to your command POCs when the EEOC issues the final version of this year's report, but you should start collecting your counselor training and ADR program data now to ensure a smooth reporting period. Please note that the count of "Resources Available for ADR" in Part XIII should NOT include non-Army EEO mediators or facilitators of other ADR methods. Only Army employees who manage or administer the EEO ADR program should be counted.



### *Pentagon Memorial Dedication, September 11, 2008*

*In remembrance of the events of September 11, 2001, the Pentagon Memorial honors the 184 people whose lives were lost at the Pentagon and on American Airlines Flight 77, their families and all those who sacrifice that we may live in freedom.*

## DoD IRD EEO Reminders

### Unnecessary Investigation Delays

We continue to experience requests to delay investigations - some after the investigator is already on-site. In partnership with the Department of Defense, Investigations Resolution Division (DoD IRD), Army is committed to completing investigations within the regulatory 180 day timeframe. It is our responsibility to provide complainants with “due process” to include a prompt investigation of their claims. If the investigation is scheduled and appropriate notice has been provided to the parties involved or the investigator is on-site, every effort must be made to conduct the investigation as planned. Processing EEO offices are to coordinate these issues with their legal staffs and respective MACOM Directors. When processing pre-complaints/complaints for tenants, coordination with the MACOM/ASCC/DRU EEO office Director is imperative.

Unless the **complainant, agency representative, or essential witness**, experiences a medical emergency, death in the family or deployment, scheduled fact-finding conferences (FFC) are to take place as planned. Even under these stated unfortunate circumstances, every effort must be made to analyze the situation on a case-by-case basis to determine if the investigation should occur or if an alternative to fact-finding is possible.

In addition, when a complainant requests a hearing while an investigation is pending, immediately inform the Administrative Judge (AJ) of such and advise the AJ that the report of investigation will be provided upon receipt. **DO NOT** withdraw the request for investigation (or cancel the investigation) unless the AJ issues written instructions to do so. If you are unsure of what to do, please contact your MACOM EEO Complaints Manager or EEOCCR.

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### Data Request Compliance

Some EEO processing offices and the DoD IRD have reported delays in processing complaints because agency officials refuse to provide copies of requested documentation in a timely manner.

Policies, procedures and guidance relating to the processing of EEO discrimination complaints governed by the EEOC Regulation, 29 C.F.R. Part 1614, are further defined and set forth in Management Directive (MD) 110 and AR 690-600. As reflected in 1614.105(a), aggrieved persons are required to consult with a counselor (or an EEO official in the role of a counselor) prior to filing a complaint in order to try to informally resolve the matter. Chapter 2 and Appendix A of MD 110 provide specific guidelines for gathering information to facilitate resolution discussions. While the request for documents/records should be relevant to the claim(s) raised by the aggrieved, failure of agency employees to respond fully and in a timely fashion to such requests can be detrimental for the agency.

Army personnel are reminded that AR 690-600, Chapter 3-8 (f) states, “Army personnel will cooperate with and support the EEO counselor in the performance of counseling duties. The EEO counselor will be free of restraint, interference, harassment, coercion, discrimination or reprisal in connection with the performance of assigned counselor duties.” This, likewise, is applicable to EEO officials who provide pre-complaint (informal) and formal complaint processing services on behalf of Garrison Commanders, as well as those tenants to whom we provide EEO services.

Also, analysts who adjudicate EEO complaints at EEOCCR are required to weigh the evidence and render a decision without bias. Analyst preparing the decision on a case will not call the processing EEO office for additional information. Decisions are based on the complaint file, including the report of investigation and the FFC transcript. EEO officers should always carefully review case files to ensure they are complete before submitting them for a FAD or hearing.



## Complaints Processing

### Fragmentations and/or Procedural Remands

29 CFR 1614 and MD 110 both speak of dismissals as being issued by “the agency” (Army) at any time up until the request for a hearing before an AJ. How the agency defines itself and organizes its complaint processing program is, of course, up to the agency. Many agencies retain such authority at their headquarters level. Army, on the other hand, designates the authority to accept and dismiss complaints to EEO officers. AR 690-600, Chapter 1-12 (k), in describing the duties of the activity/servicing EEO officer, states that the EEO officer shall, “After coordination with the labor counselor, make the decision to accept or dismiss, in whole or in part, individual complaints at the activity, subject to the final decision of the Army Director of EEO, or designee.” Chapter 4-4 (a) also states that dismissals are issued by the EEO officer. Other than Army’s initial 15-day time frame to accept or dismiss claims, the AR 690-600 sets no time limit on the activity EEO officer’s authority to accept or dismiss, except that laid down by the EEOC until the complainant requests a hearing. The EEO officer, therefore, has the authority to accept or dismiss any claim at any time, which would naturally include the possible reversal of earlier decisions, until a hearing is requested. Always engage your labor counselor in some interactive discussions.

Under the terms of AR 690-600, Chapter 1-7 (c) and Chapter 4-4 (a) and (f) the EEO officer’s acceptance or dismissal authority is subject to a final decision from the Agency, Director for EEO or designee, but this does not mean that once the EEO officer issues an initial decision that all power shifts to EEOCCR. EEOCCR retains ultimate authority should it choose to act, either to dismiss a previously accepted claim as part of a FAD or FAA, or to direct acceptance of a previously dismissed claim. However, this does NOT deprive the EEO officer of the authority in Chapter 1-12 (k) as described above to do those very same things up until a hearing is requested. The EEO officer may accept a dismissed claim or complaint, or dismiss an accepted claim or entire complaint at any time until the expiration of their authority (hearing request), with the caveat that EEOCCR may, if it so chooses, override the EEO officer. Having said all that, EEO officers have the authority to override themselves, at least until the complainant requests a hearing.



*Share the View Outside of our Window - “The Tidal Basin”*

## Complaints Processing

### Pre-Complaint Processing Concerns

As an Agency we continue to struggle with EEO counselor reports (DA Form 7510) that are not well written and still, too often, untimely. In an effort to address Agency trends, amendments to AR 690-600 are underway. Below is a summation of the changes to the regulation, the language is not verbatim. The changes are minor in the sense of how we should already function. However, if you are not currently practicing the following habits, **the changes are effective immediately.**

All newly appointed EEO counselors must receive a minimum of 36 hours of initial training by DA certified trainers. The activity EEO officer will provide at least 24 hours of continuing counselor training annually. The supplemental training will be training that the EEO officer deems appropriate to keep EEO counselors informed and proficient as EEO counselors.

When an individual contacts an EEO official or counselor with the intent of proceeding with a discrimination complaint, the individual is referred to as “aggrieved.” The pre-complaint intake interview must begin **immediately**. The intake interview is conducted by an EEO careerist (not collateral duty or contract counselor). The pre-complaint intake will be recorded as the initial portion of the EEO Counselor's Report (DA Form 7510). **The DA Form 7510 will NOT be given to aggrieved persons to complete under any circumstances.**

The EEO careerist will explain the activity's ADR program, including the differences between ADR and traditional EEO counseling. Resolution should always be attempted during the pre-complaint phase. The EEO careerist will explain and provide the aggrieved a copy of the Aggrieved Person's Rights and Responsibilities notice. The EEO careerist will provide the EEO counselor with the DA Form 7510 as completed to date (based on the intake interview). The EEO counselor will conduct the inquiry within 3 days from the date the EEO careerist provides the DA Form 7510. The counselor will ensure that the aggrieved fully understands the option to use ADR, if offered, and his or her rights and responsibilities. Upon completion of the inquiry, the EEO counselor will complete the DA Form 7510 and submit it to the EEO officer in no later than 5 days.

Human progress is neither automatic nor inevitable. Every step toward the goal of justice requires sacrifice, suffering, and struggle; the tireless exertions and passionate concern of dedicated individuals.

**Martin Luther King, Jr.**



**“Three Soldiers” by the Viet Nam Memorial Wall**



## EEO Training

### Counselor Training

EEO counseling within the Army is not restricted to collateral duty but includes EEO careerists and/or contract counselors, whichever is deemed beneficial for your command/activity. All counselors, regardless of status, must receive initial training from a DA certified counselor trainer and annual refresher training from either the activity EEO officer or a DA certified counselor trainer .

Before conducting EEO counselor training, the EEO hosting activity will provide the training plan to its MACOM EEO Director at least 60 days in advance of the proposed training date, including the credentials of the DA certified counselor trainer who will facilitate. Your MACOM EEO office will ensure current training materials are provided to the instructor. Please note that DA training materials **are not** to be given to outside trainers, unless otherwise approved by EEOCCR through your MACOM EEO office.

Upon completion of the training, the instructor will forward to EEOCCR the names of the students, their test scores, and pre-printed certificates with the signature block of the Director, EEOCCR for certification (power point version or hard copy). Signed certificates will be mailed to the EEO hosting activity within five working days from the date received.

We have two sample certificate templates for your use; one for DA civilians and one for active duty military. Please note, that active duty military will not be certified as EEO Counselors. They will only receive a certificate stating that they received training for the DA EEO Counselors Course.

### First DA EEO Counselor Updated Train-the-Trainer (UT3) Course, July 8-11, 2008



1st Row: Insook Cho, Gloria Wilson Ahlemann, Noma Filiki, Rachel Moritz, Kim Brewton, 2d Row: Orlandez Lewis, Patricia Rosas, Debra Schwartz, Diane Siler, Alberto Crespo, Kimberly Loder-Albritton, Wanda Jimenez, 3d Row: Robert McRae, Carolyn Becks, Jean Ellis, Brenda Mack, Judith Poole, Marion Robinson, Paul Boinay, Carole Page, 4th Row: Spurgeon Moore, Scott Rich, Cheryl Stovall, Steven Horne, Rufus Caruthers, Efren Medrano, James Jenkins,

## EEO Careerists Essentials

### Why Fact Finding Conferences

The Army's standard method for investigating EEO complaints is by DoD IRD FFC, with the proceedings transcribed by a certified court reporter. Waivers to the FFC must be submitted through your EEO chain to the Director, EEOCCR, for consideration and approval/disapproval. Waivers are approved only for a justifiable cause. FFC's allow for follow-up questions from the investigator, the agency representative and the complainant. This clarification is often important when an analyst or AJ reads the case and prepares a decision. Our goal is to ensure that all of the facts of the case have been documented, so that a legally sufficient decision can be rendered.

### Legal Review of Acceptance/Dismissal Decisions

The EEO officer is ultimately responsible for issuing the acceptance/dismissal decision within 15 days of the receipt of a formal complaint of discrimination. These decisions are to be coordinated for legal sufficiency with the servicing labor counselor and issuance of the decision will not be delayed for that coordination. In other words, EEO officers are expected to comply with the 15-day suspense for issuing acceptance/dismissal decisions. Work closely with your labor attorney to ensure timely decisions. The EEO Officer is the accountable official in this process.

A case in point; in the legal sufficiency review of one acceptance/dismissal decision, the EEO officer and the labor attorney decided after the formal investigation was completed, to discuss whether or not the case should be dismissed based upon its merits. This action was unnecessarily held up much longer than 15 days thus falling in to the realm of being untimely. As you should be aware, EEO officers do not have the authority to dismiss complaints based on their merits. Merit decisions are issued by EEOCCR when the complaint is forwarded for a decision on the record, or by an EEOC AJ, when the complaint is forwarded to EEOC for a hearing.

### Critical Time Frames that Must be Met

If you or your labor counselors are notified of an AJ's intent to issue a finding of discrimination in one of your complaints, be sure to let the staff at EEOCCR know as soon as possible! **AJ Decisions received by EEO offices** and/or agency representatives must be forwarded to EEOCCR immediately. AJ Decisions and all correspondence received from the AJ are to be forwarded to the following email address [EEOCCR@hqda.army.mil](mailto:EEOCCR@hqda.army.mil). **Appeals received by EEO offices** and/or agency representatives must be forwarded to EEOCCR immediately. Email appeals to either Tish Ash ([Tish.Ash@us.army.mil](mailto:Tish.Ash@us.army.mil)) or Jennifer Kindinger ([Jennifer.Kindinger@us.army.mil](mailto:Jennifer.Kindinger@us.army.mil)).

### Case File Violations

We are receiving case file that are not bound or tabbed correctly. With all of our offices doing more with less, effective immediately, any complaint file sent to EEOCCR that is not in compliance with AR 690-600 will be returned to the processing EEO office. Case files must be sent to EEOCCR phase tabbed. If you require a review on how to phase tab, please refer to AR 690-600, Chapter 8. All case files **MUST** have a complete and current title page. The title page must include the complete mailing address for the processing EEO office, the agency representative, and the MACOM. Email addresses and office symbols must be included for each office. If the complainant/aggrieved has representation, that information must be included on the title page as well. Where at all possible, please provide a copy of the IRD investigative disk.



## Mind Jogger

### Negotiated Settlement Agreements

Achieving settlement of an EEO complaint is usually a cause for celebration in the EEO office. Drafting a competent Negotiated Settlement Agreement (NSA) is an EEO function, and EEO careerist should be skilled in doing so. It is important that the NSA be carefully written, and always coordinated with the labor attorney. The following are terms of settlement that were forwarded to EEOCCR for a determination of whether a breach of settlement occurred (*representative of what we see way too much*). Test your knowledge of NSA construction. For each term of settlement, determine if it has any deficiencies.

1. The only term of settlement is as follows: “The Army agrees to settle subject complaint with the understanding that if action is not taken against “Ms. Jane Doe,” the complainant is free to reopen his complaint.” The complainant alleged breach of settlement, because he had not been informed whether any action had been taken against “Ms. Jane Doe.”

**Answer:**

This NSA is deficient. Under contract law, all NSAs must provide the complainant a benefit that he/she was not already entitled to as a matter of law and the Army must incur a legal detriment. Taking action against another person does not convey a benefit to the complainant. Further analysis of the term identifies additional flaws. For example, there is no date listed by which the action will be taken. This often leads complainants to believe that actions will occur in a much shorter period of time than is reasonable. The action that will be taken is not specified, what does the Agency have to do?. Finally, in most circumstances, it is a violation of the Privacy Act for management to provide information pertaining to disciplinary actions about one employee to another. So what did EEOCCR do with the breach of settlement allegation? As a matter of law, we found that the NSA was void, because the Army did not incur a legal detriment and we ordered the activity to reinstate the complaint for processing.

2. One of the terms of settlement is as follows: “The position of Social Service Assistant, US-186-05, in which the Complainant is being placed shall be a full time permanent position and it is the understanding and intention of the Army that said position will not be eliminated.” The complainant signed the NSA 20 years ago. She alleges a breach of settlement because a reorganization of functions is resulting in elimination of her position.

**Answer:**

This term of settlement had been in effect for 20 years before reorganization resulted in elimination of the position. The EEOC has held that where an individual bargains for a position without any specific terms as to the length of service, it would be improper to interpret the reasonable intentions of the parties to include employment in the exact position forever. The Commission has also held that there is no breach of a settlement agreement “where an individual has been assigned to a position pursuant to a settlement agreement, has held the position for a period of time, and then is excised out of the position because of agency downsizing that was not anticipated at the time of the agreement.” So what did EEOCCR do with the breach of settlement allegation? We found that no breach of settlement occurred.

**Our Mailing Address is:**

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Arlington, VA 22202-4508

*Our success is measured by our ability  
to fully and fairly adjudicate the  
civilian complaints of discrimination  
on behalf of the Secretary of the  
Army with service that is responsive,  
high quality, and collaborative.*

